

**NON-PUBLIC VERSION -- FILED UNDER SEAL**  
**CONTAINS CONFIDENTIAL INFORMATION NOT FOR PUBLIC DISCLOSURE**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

NOVOZYMES A/S,

Plaintiff,

C.A. No. 05-160-KAJ

v.

GENENCOR INTERNATIONAL, INC. and

ENZYME DEVELOPMENT CORPORATION,

Defendants.

**DECLARATION OF GREGORY K. LEFEBVRE**

I, Gregory K. LeFebvre, do hereby declare as follows:

1. I make this declaration in support of the Motion of Novozymes A/S for a Preliminary Injunction. I have personal knowledge of the facts set forth herein and if called to testify, I could and would truthfully testify to them.
2. I am currently an employee of Novozymes of North America, Inc. ("Novozymes" may refer to either Novozymes A/S or to Novozymes of North America, Inc., as the case may be). My current job title is 

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In the course of my employment at Novozymes, I have been

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involved in and directed work in marketing and technical support activities in the above-mentioned markets..

3.

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4. Alpha-amylases are useful in a variety of commercial applications that involve the processing of starches -- especially in the fuel ethanol industry, where ethanol fuel is produced from starch crops such as corn, barley, and wheat. Alpha-amylase enzymes are used in this particular industry to liquefy and reduce viscosity of the starch feedstocks, thereby facilitating their processing in the manufacturing plant. In a subsequent step, another industrial enzyme, gluco-amylase (one of which is also made by Novozymes), is used to convert the liquefied starch into fermentable sugars (e.g., glucose). Yeast then converts the sugars into ethanol.

5. Novozymes produces and sells several enzyme products in the United States which are important to the fuel ethanol industry. Novozymes' Liquozyme® SC and Termamyl® are each alpha-amylase products which reduce starch viscosity by breaking complex starches into small molecules. Novozymes' Spirizyme® Fuel products are gluco-amylases which convert the less viscous, smaller liquefied starches to even smaller glucose molecules which yeast ferment into ethanol. Before Genencor introduced its infringing Spezyme® Ethyl alpha-amylase enzyme product in 2004, these Novozymes' enzyme products had gained wide-market acceptance. Novozymes also produces and sells its patented Termamyl SC alpha-amylase product to the food and beverage industry. It is used to break down starches into smaller sugars in this industry, as well.

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12. Novozymes has been forced to reduce the price of its Liquozyme SC alpha-amylase product line in 2005 by an average of about to compete with Genencor's infringing product. Novozymes remains under constant price pressure from its customers who have been offered the infringing Spezyme Ethyl alpha-amylase product. Damages resulting from this price erosion are incalculable

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13. Price pressure from Genencor has translated into non-compensable lost market share where Novozymes' customers have opted to purchase the infringing Genencor product instead of the product offered by Novozymes.

14. Before Genencor entered the market in April 2004, Novozymes had about 75% of the United States fuel ethanol alpha-amylase market. Since Genencor entered the market, t

**REDACTED**

This loss of market share and corresponding price erosion, translates into a significant, immeasurable, and non-compensable loss to Novozymes.

15. Novozymes' damages are further non-compensable because its lost customers and market share extend beyond the alpha-amylase market.

16. Commercial enzyme users, at times, purchase several different types of enzymes, rather than a single enzyme. Customers may also prefer to purchase their enzyme needs from as few suppliers as possible to concentrate their buying power and receive the best pricing, supply, and service.

17. It is common in the relevant market here that, when a customer shifts its purchases of one enzyme product from one supplier to another, the purchaser will also seek to shift its purchases of other enzyme products to that new supplier. Therefore, loss of sales and market share by Novozymes here will spread beyond alpha-amylase enzymes and will affect other Novozymes' products (such as its gluco-amylase enzyme line), unless defendants' infringing activities are stopped immediately and the previous *status quo* is maintained.

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18. Because of Genencor's infringing sales of Spezyme® Ethyl, Novozymes has suffered a loss in market share, not just of its Liquozyme SC and Termamyl alpha-amylase enzyme products, but also for its convoyed gluco-amylase enzyme sales.

19. Both of Novozymes's alpha-amylase enzyme product lines, Liquozyme SC and Termamyl, were established product lines in the fuel ethanol and starch processing industries prior to the commencement of Genencor's infringing sales. Every day that Genencor is allowed to offer its infringing product, Novozymes suffers irreparable harm that undermines these established product lines.

20. I believe that Genencor will not suffer any significant undue hardship if preliminarily enjoined from infringing Novozymes' '031 patent. Genencor sells another alpha-amylase enzyme product (called Spezyme® Fred), and it sells many other enzyme products as well. If preliminarily enjoined, Genencor will still have other remaining non-infringing enzyme product lines to sell.

21. Novozymes is an international leader in the research, development, and marketing of commercial enzymes. In 1979, Novozymes opened a manufacturing facility in Franklinton, North Carolina. Since 1990, Novozymes has spent over \$100 million on plant expansions at that facility. It is now the largest manufacturing plant for industrial enzymes in the United States.

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22. Its Franklinton facility includes a research laboratory and a pilot plant, where new enzymes and uses for enzymes are discovered and developed. Much of this research is directed at solving problems brought to Novozymes by customers.

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23. Novozymes has built a reputation through innovation and has protected its innovations through patents. If Novozymes could not protect its proprietary technology in the U.S. through patents, it would not have invested as heavily in its research or facilities in the U.S. and will not continue to invest in this manner.

24. Franklinton consists mainly of farms and small businesses. Novozymes is Franklinton's largest employer, and most of Franklinton's businesses depend in some part on Novozymes and its employees.

25. Genencor has begun to sell an infringing food grade Spezyme Ethyl product to the food and beverage industry outside of the United States, and has begun sampling it to this industry in the United States.

Novozymes presently sells its patented Termamyl SC alpha-amylase product to this industry. I believe further that Genencor's sales of Spezyme Ethyl to the U.S. food and beverage industry will cause irreparable harm to Novozymes in yet another segment of the commercial enzyme business.

26. There is a significant likelihood that, if Genencor's patent infringement is not preliminarily enjoined, Novozymes will likely continue to suffer irreversible and unfairly precipitated price reductions and loss of market share, not just for its Liquozymes SC alpha-amylase enzyme product, but also for its convoyed sales of related gluco-amylase enzyme products as well. These products are functionally related because Novozymes' gluco-amylase product is used in a subsequent process step to the use of Novozymes' alpha-amylase product in the making of ethanol.

27.

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28. Genencor remained on the market even after it learned that Novozymes' allowed patent application (which led to the '031 patent) would cover Genencor's alpha-amylase enzyme product upon issuance of the patent. This was so because on September 29, 2001 Novozymes voluntarily gave Genencor a copy of the allowed patent claims from the application in the hope that Genencor would see the fruitlessness of continuing to sell its product.

29. I am not aware of any critical public interest that would be injured by Novozymes' grant of the requested preliminary relief. However, the public interest of the people in Franklinton, North Carolina, may be adversely affected if the preliminary injunction is not granted.

REDACTED

30. Further declarant saith not.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 22, 2005

GKL  
Gregory K. LeFebvre

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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NOVOZYMES A/S,

Plaintiff,

C.A. No.

-against-

05-160-KAJ

GENENCOR INTERNATIONAL, INC. and  
ENZYME DEVELOPMENT CORPORATION,

Defendants.

**CERTIFIED  
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August 15, 2006

10:04 a.m.

Videotaped 30(b)(6) Deposition of  
NOVOZYMES A/S by JEFFREY FALLER, taken by  
Defendants, pursuant to Notice, at the offices  
of Darby & Darby, 805 Third Avenue, New York,  
New York, before TAMMEY M. PASTOR, a  
Registered Professional Reporter, Certified  
LiveNote Reporter and Notary Public within and  
for the State of New York.

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August 15, 2006

1  
2 APP E A R A N C E S:

3 DARBY & DARBY  
4 Attorneys for Plaintiff  
5 805 Third Avenue  
6 New York, New York 10022-7513

7 BY: DAVID K. TELLEKSON, ESQ.

8 JONES DAY  
9 Attorneys for Defendants  
10 2882 Sand Hill Road, Suite 240  
11 Menlo Park, California 94025

12 (Via Telephone)

13 BY: THARAN GREGORY LANIER, ESQ.

14 -and-

15 CORA SCHMID, ESQ.

16 ALSO PRESENT:

17 CHARLES D. SHAPIRO, Esq.  
18 General Counsel Novozymes North America  
19 MATTHEW CHAVEZ, Videographer  
20 LegaLink Video Solutions San Francisco

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August 15, 2006

1 JEFF FALLER - HIGHLY CONFIDENTIAL

2 VIDEOGRAPHER: Here begins  
3 videotape number 1 in the deposition of Jeff  
4 Faller in the matter of Novozymes A/S versus  
5 Genencor International, Inc. and Enzyme  
6 Development Corporation in the United States  
7 District Court, District of Delaware.

8 Today's date is August 15,  
9 2006. The time on the video monitor is 10:04  
10 a.m.

11 The video operator today is  
12 Matthew Chavez, a notary public contracted by  
13 LegaLink Video Solutions San Francisco  
14 California. This video deposition is taking  
15 place at Darby & Darby 805 Third Avenue,  
16 New York, New York.

17 Counsel, please voice identify  
18 yourselves and state whom you represent.

19 MR. TELLEKSON: David  
20 Tellekson representing the plaintiff,  
21 Novozymes A/S.

22 MR. SHAPIRO: Charles Shapiro,  
23 General Counsel for Novozymes North America,  
24 Inc.

25 MR. LANIER: My name is Greg

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August 15, 2006

1                   JEFF FALLER - HIGHLY CONFIDENTIAL  
2 Lanier, I am with the firm of Jones Day. With  
3 me is my colleague Cora Schmid. We are  
4 appearing telephonically. We represent the  
5 defendants.

6                   VIDEOGRAPHER: Will the court  
7 reporter Tammy Pastor please swear the  
8 witness.

9                   JEFFREY FALLER,  
10 residing at 15802 Country Lane West, Platt  
11 City, Missouri 64079, having been first duly  
12 sworn by the Notary Public (Tammy M. Pastor),  
13 was examined and testified as follows:

14                   EXAMINATION CONDUCTED BY MR. LANIER:

15                   Q. Mr. Faller, good morning. We  
16 met very briefly and telephonically before the  
17 deposition. But, again, for the record my  
18 name is Greg Lanier, I represent Genencor and  
19 EDC in this case.

20                   Thank you for making yourself  
21 available. And, again, for the record thank  
22 you all for your flexibility and working with  
23 us to do this by telephone.

24                   Mr. Faller, would you state  
25 your full name, please.

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August 15, 2006

1 JEFF FALLER - HIGHLY CONFIDENTIAL

2 Novozymes Products in aggregate priced higher  
3 or lower than they were on January 1, 2004?

4 A. Repeat that please.

5 Q. Certainly. On March 14, 2005  
6 were the Novozymes Products priced higher or  
7 lower than they were on January 1, 2004?

8 A. Lower.

9 MR. TELLEKSON: Mr. Lanier,  
10 for clarity, you're using Novozymes Products  
11 to be capital N, capital P as defined in  
12 Schedule A, because otherwise the questions  
13 are unclear?

14 MR. LANIER: Thank you for  
15 that clarification. I am in fact using the  
16 term that way. I'm sorry I did not say that  
17 specifically. So I will reask the question to  
18 make sure it is clear.

19 Q. Sir, just a background  
20 question, do you see the definition of  
21 Novozymes Products at the top of Schedule A?

22 A. Yes, I do.

23 Q. So, with that definition of  
24 Novozymes Products then I will reask the  
25 question.

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August 15, 2006

1 JEFF FALLER - HIGHLY CONFIDENTIAL

2 Were the Novozymes products  
3 priced higher or lower on March 15 -- March  
4 14, March 14, 2005 than they were on January  
5 1, 2004?

6 A. Lower.

7 Q. How much lower, if you can  
8 quantify it?

9 A. I don't have the specifics of  
10 that.

11 Q. Can you quantify how much the  
12 prices have declined from January 1, 2004 to  
13 the present day?

14 A. I could quantify it, but would  
15 need information to be able to quantify that.

16 Q. If you were to walk back to  
17 your office and have to do this task, to what  
18 information would you refer?

19 A. I would be looking for reports  
20 out of our information systems that could give  
21 me the specific selling prices or average  
22 selling prices.

23 Q. Can you estimate, sir, how much  
24 of the overall decline in price that has  
25 happened from January 1, 2004 through the

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August 15, 2006

1                   JEFF FALLER - HIGHLY CONFIDENTIAL  
2 within Novozymes, putting aside discussions  
3 with lawyers, I don't know whether there is or  
4 isn't any, putting aside conversations with  
5 lawyers, are you aware of discussion within  
6 Novozymes about what range of price increase  
7 is possible in the event that Spezyme Ethyl is  
8 removed from the market?

9                   A.    I don't recall specific  
10 discussions about a range per se.

11                  Q.    Have you yourself given any  
12 consideration to what prices could be charged  
13 for Liquozyme and/or Termamyl if Spezyme Ethyl  
14 were removed from the market?

15                  A.    Yes.

16                  Q.    Has your consideration reached  
17 a conclusion?

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25 August 2006 - 08:45

**Danisco withdraws enzyme product from the market**

**Notice no. 12/2006**

Following a patent infringement ruling in a Delaware US court Genencor has decided voluntarily to withdraw SPEZYME® ETHYL from the market – an alpha amylase enzyme used in ethanol production.

The ruling states that a Novozymes A/S patent has been infringed. The legal options are currently being reviewed and an appeal of the ruling is being considered. Should the ruling be upheld it may result in Genencor being liable for compensation for the patent infringement. This morning Genencor launched a new product SPEZYME® XTRA to replace SPEZYME® ETHYL. The product has been successfully tested on both pilot and full scale at multiple customer sites.

Overall, this court ruling will not materially affect Danisco's enzyme business including the ethanol segment. The product withdrawn is just one of a full product range for the ethanol segment, which covers both the traditional ethanol production process and the 'no-cook' process, for which Genencor launched the STARGEN® 001 product in 2005.

Yours faithfully

Tom Knutzen  
CEO

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE

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4 NOVOZYMES A/S, )  
5 Plaintiff, )  
6 vs. ) C.A. No. 05-160-KAJ  
7 GENENCOR INTERNATIONAL, INC., )  
8 and ENZYME DEVELOPMENT )  
9 CORPORATION, )  
10 Defendants. )  
11 \_\_\_\_\_ )  
12  
13 30(B)(6) DEPOSITION OF GENENCOR INTERNATIONAL  
14 W. DOUGLAS CRABB  
15 \_\_\_\_\_  
16 Tuesday, August 29, 2006  
17  
18 HIGHLY CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER  
19  
20 REPORTER: SANDRA BOSTOW, CSR# 5770  
21  
22  
23 ELLEN GRAUER COURT REPORTING CO. LLC  
24 126 East 56th Street, Fifth Floor  
New York, New York 10022  
212-750-6434  
25 REF: 81627

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